

Ernesto Garcia

RN105880603

Docket No. 2012-0859-MSW-E

Order Type:

Default Order

Findings Order Justification:

N/A

Media:

MSW

Small Business:

N/A

Location(s) Where Violation(s) Occurred:

10638 County Road 407, La Feria, Cameron County

Type of Operation:

unauthorized municipal solid waste ("MSW") disposal site

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date:	November 9, 2012
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Comments Received:	None
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Penalty Information

Total Penalty Assessed:	\$1,275
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Total Paid to General Revenue:	\$0
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Total Due to General Revenue:	\$1,275
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Compliance History Classifications:

Person/CN –Average

Site/RN – Average

Major Source:	No
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Statutory Limit Adjustment:	None
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Applicable Penalty Policy:	September 2011
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Ernesto Garcia

RN105880603

Docket No. 2012-0859-MSW-E

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: January 18, 2012
Date(s) of NOV(s): N/A
Date(s) of NOE(s): January 20, 2012

Violation Information

Failed to prevent the unauthorized disposal of MSW (approx. seven cubic yards of construction and demolition waste) [30 TEX. ADMIN. CODE § 330.15(c)].

Corrective Actions/Technical Requirements**Corrective Action(s) Completed:**

None

Technical Requirements:

1. Immediately cease disposing of any additional MSW at the Site.
2. Within 30 days, remove all unauthorized MSW from the Site, including but not limited to all construction and demolition waste, and dispose of it at an authorized facility.
3. Within 45 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: September 4, 2012
Date Green Card(s) Signed: September 14, 2012
Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Rebecca M. Combs, Litigation Division, (512) 239-5846
Lena Roberts, Litigation Division, (512) 239-3400
James Murphy, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Maggie Dennis, Enforcement Division, (512) 239- 2578

TCEQ Regional Contact: Francisco Chavero, Harlingen Regional Office, (956) 425-6010

Respondent: Ernesto Garcia, P.O. Box 203, Santa Maria, Texas 78592

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	2-Apr-2012	Screening	9-Apr-2012	EPA Due	
	PCW	30-Aug-2012				

RESPONDENT/FACILITY INFORMATION

Respondent	Ernesto Garcia		
Reg. Ent. Ref. No.	RN105880603		
Facility/Site Region	15-Harlingen	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	44011	No. of Violations	1
Docket No.	2012-0859-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Margarita Dennis
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$1,250
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	2.0%	Enhancement	Subtotals 2, 3, & 7	\$25
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Notes	Enhancement for one NOV with dissimilar violations.			
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Culpability	No	0.0%	Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.			
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0%	Enhancement*	Subtotal 6	\$0
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Total EB Amounts \$5
Approx. Cost of Compliance \$111
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,275
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes				
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Final Penalty Amount	\$1,275
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$1,275
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.			
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PAYABLE PENALTY	\$1,275
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Screening Date 9-Apr-2012

Docket No. 2012-0859-MSW-E

PCW

Respondent Ernesto Garcia

Policy Revision 3 (September 2011)

Case ID No. 44011

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105880603

Media [Statute] Municipal Solid Waste

Enf. Coordinator Margarita Dennis

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 2%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with dissimilar violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 2%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 2%

Screening Date	9-Apr-2012	Docket No.	2012-0859-MSW-E	PCW
Respondent	Ernesto Garcia	Policy Revision 3 (September 2011)		
Case ID No.	44011	PCW Revision August 3, 2011		
Reg. Ent. Reference No.	RN105880603			
Media [Statute]	Municipal Solid Waste			
Enf. Coordinator	Margarita Dennis			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 330.15(c)			
Violation Description	Failed to prevent the unauthorized disposal of municipal solid waste at the Site. Specifically, approximately seven cubic yards of construction and demolition waste was disposed of at the Site.			
Base Penalty				\$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual			x	
	Potential				5.0%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent

Matrix Notes	Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of this violation.
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Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events	1		Number of violation days	82
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mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

One quarterly event is recommended based on documentation of the violation during the January 18, 2012 investigation to the April 9, 2012 screening date.

Violation Base Penalty \$1,250

Good Faith Efforts to Comply

	0.0%	Reduction	
	Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary			
Ordinary			
N/A	x	(mark with x)	

Notes	The Respondent does not meet the good faith criteria for this violation.
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Violation Subtotal \$1,250

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount \$5	Violation Final Penalty Total \$1,275
This violation Final Assessed Penalty (adjusted for limits) \$1,275	

Economic Benefit Worksheet

Respondent Ernesto Garcia
Case ID No. 44011
Reg. Ent. Reference No. RN105880603
Media Municipal Solid Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$111	18-Jan-2012	4-Jan-2013	0.96	\$5	n/a	\$5
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove and dispose of the waste at an authorized facility. The date required is the investigation date and the final date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$111

TOTAL

\$5

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603630286	Garcia, Ernesto	Classification: AVERAGE	Rating: 6.00
Regulated Entity:	RN105880603	Garcia Ernesto	Classification: AVERAGE	Site Rating: 6.00
ID Number(s):	MUNICIPAL SOLID WASTE NON PERMITTED	ID NUMBER		455150192
Location:	10638 COUNTY ROAD 407, LA FERIA, TEXAS			
TCEQ Region:	REGION 15 - HARLINGEN			
Date Compliance History Prepared:	April 12, 2012			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	April 12, 2007 to April 12, 2012			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Brianna Carlson	Phone:	956/430-6021	

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? YES
2. Has there been a (known) change in ownership/operator of the site during the compliance period? NO
3. If **YES**, who is the current owner/operator? N/A
4. If **YES**, who was/were the prior owner(s)/operator(s)? N/A
5. If **YES**, when did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2011 Repeat Violator: NO

Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 - 1 01/18/2012 (964074)
 - 2 03/29/2012 (981269)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 02/10/2011 (885693)

Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 328, SubChapter C 328.13(a)		
Description:	Failure to discard or dispose of a lead-acid battery to: a battery retailer; a battery wholesaler; a secondary lead smelter; or a collection or recycling facility authorized under the laws of this state or by the Environmental Protection Agency (EPA). Specifically the entity attempted to dispose of a small 9 volt lead-acid Child's electric motor vehicle battery by burning.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 111, SubChapter B 111.201		
Description:	Failure to prevent any outdoor burning within the State of Texas, except as provided by this subchapter or by orders or permits of the Commission. Specifically the entity was burning construction and demolition waste that included asphalt shingles, painted wood, and fiberglass insulation.		
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
ERNESTO GARCIA;
RN105880603**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2012-0859-MSW-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Ernesto Garcia ("Respondent").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondent owns and operates a unauthorized municipal solid waste disposal site located at 10638 County Road 407 in La Feria, Cameron County, Texas (the "Site"). The Site involves the management and/or the disposal of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During an investigation conducted on January 18, 2012, a TCEQ Harlingen Regional Office investigator documented that Respondent failed to prevent the unauthorized disposal of MSW. Specifically, approximately seven cubic yards of construction and demolition waste was disposed of at the Site.
3. Respondent received notice of the violation on or about January 25, 2012.
4. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Ernesto Garcia" (the "EDPRP") in the TCEQ Chief Clerk's office on September 4, 2012.
5. By letter dated September 4, 2012, sent to Respondent's last known address via certified mail, return receipt requested, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on September 14, 2012, as evidenced by the signature on the card.
6. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 361 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2, Respondent failed to prevent the unauthorized disposal of MSW at the Site, in violation of TEX. ADMIN. CODE § 330.15(c).
3. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 6, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of one thousand two hundred seventy-five dollars (\$1,275.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Respondent is assessed an administrative penalty in the amount of one thousand two hundred seventy-five dollars (\$1,275.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here.
2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Ernesto Garcia; Docket No. 2012-0859-MSW-E" to:

Financial Administration Division, Revenues Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

3. Respondent shall undertake the following technical requirements:
- a. Immediately upon the effective date of this Order, Respondent shall cease disposing of any additional MSW at the Site, in accordance with TEX. ADMIN. CODE § 330.15(c);
 - b. Within 30 days after the effective date of this Order, Respondent shall remove all unauthorized MSW from the Site, including but not limited to all construction and demolition waste, and dispose of it at an authorized facility; and
 - c. Within 45 days after the effective date of this Order, Respondent shall submit written certification to demonstrate compliance with Ordering Provisions Nos. 3.a. and 3.b. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Respondent shall submit the written certification and supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

Order Compliance Team
Texas Commission on Environmental Quality
Enforcement Division, MC 149A
P.O. Box 13087
Austin, Texas 78711-3087

and:

Francisco Chavero, Waste Section Manager
Harlingen Regional Office
Texas Commission on Environmental Quality
1804 West Jefferson Avenue
Harlingen, Texas 78550-5247

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
6. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
10. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF REBECCA M. COMBS

STATE OF TEXAS

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COUNTY OF TRAVIS

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"My name is Rebecca M. Combs. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Ernesto Garcia" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on September 4, 2012.

The EDPRP was mailed to Respondent's last known address on September 4, 2012, via certified mail, return receipt requested. According to the return receipt "green card," Respondent received notice of the EDPRP on September 14, 2012, as evidenced by the signature on the card.

More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."


Rebecca M. Combs, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Rebecca M. Combs, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 7th day of November A.D. 2012.


Notary Signature

